FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.
CRIMINAL APPLICATION NO. 399 OF 2005.
IN
CRIMINAL APPEAL NO. 76 OF 2005 .

Prakash Dnyandeo Yadav. ..Applicant
vs.
The State of Maharashtra. ..Respondent.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri A.P. Mundargi, Senior Counsel with
R.S. Kate for the applicant.
Shri D.P. Adsule, A.P.P. for the State.

CORAM: V.M.KANADE,J.
DATED: 2-2-2005.

P.C.:

1. Applicant is convicted by the trial Court for having committed an offence punishable under section 304(II) of the Indian Penal Code and he is sentenced to suffer R.I. for 3 years. The prosecution case is that the applicant was working as Police Inspector and was posted at Yevat Police Station. On the day of the incident, i.e. on 28.4.1998, the applicant was assigned the patrolling duty at about 10 p.m. and he along with his other colleagues were on Solapur Highway. He received information by wireless that a robbery had taken place near village Boriandi. Accordingly, applicant and

others went near the village and were searching the thieves who had committed the said offence.

2. In the meantime, some of the villagers woke up and enquiry was made by driver of the police jeep Shri Chandgude whether any robbery had taken place near the village. These villagers Dnyanoba and his brother Tukaram and Baban Deshmukh also went in search for the said robbers. They found one person standing in the field with a torch and they proceeded towards the applicant under a mistaken belief that he was one of the accused in the robbery case. The accused-applicant on the other hand had mistaken these villagers as the accused in the robbery case and he took out his revolver and fired a bullet which hit on the chest of Tukaram, who died on the spot as a result of the said bullet injury.

3. Learned Counsel appearing for the applicant submitted that the trial Court has convicted the applicant and sentenced him to suffer R.I. for 3 years. It is submitted that bullet was fired accidentally and there was neither any intention nor knowledge to open the fire.

He submitted that therefore, offence does not fall within the category of section 304 (II) of the I.P.C.

4. In my view, this is a fit case for grant of bail. It is an admitted position that P.W.1 Dnyanoba and Baban Deshmukh have deposed that they had proceeded towards the applicant under the mistaken belief that he was one of the thieves who had committed robbery. It has come on record that it was dark when incident had taken place. Thus, it is possible that applicant was mistaken that those 3 persons, who were approaching him were thieves. In these circumstances, applicant is entitled to be released on bail.

5. Accordingly, applicant be released on bail in the sum of Rs. 5,000/- (five thousand) with one or two sureties in the like amount.